

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF CALIFORNIA

CLARENCE RAY, JR.,	)	Case No. CIV. F-96-6252-AWI
	)	
Petitioner,	)	<u>DEATH PENALTY CASE</u>
	)	
vs.	)	ORDER FOLLOWING PRELIMINARY
	)	CASE MANAGEMENT CONFERENCE
Steven W. Ornoski, as Acting	)	
Warden of San Quentin State	)	DATE: February 22, 2006
Prison,	)	TIME: 8:30 a.m.
	)	COURTROOM TWO
Respondent.	)	
_____	)	

This matter came on for a case management conference in the above entitled Court on February 22, 2006 at 8:30 a.m., the Honorable Anthony W. Ishii, presiding. Petitioner Clarence Ray, Jr. ("Ray") was represented by Assistant Federal Defender Tim Schardl, on behalf of the Selection Board of the Eastern District of California. Respondent Steven W. Ornoski, as Acting Warden of San Quentin State Prison (the "Warden"), was represented by Deputy Attorney General Marcia Fay.

After having been on state exhaustion for nearly nine years, Ray, on December 28, 2005, requested the Court to refer his federal case to the Selection Board of the Eastern District of California for recommendation of qualified appointed counsel. The Court granted Ray's request on December 30, 2005, and additionally directed the parties to appear telephonically for a preliminary case management

1 conference. The purpose of the hearing was to hear from both parties  
2 regarding the status of pending state exhaustion proceedings, from the  
3 Selection Board concerning the status of its recommendation of  
4 suitable counsel for Ray, and from the Warden regarding any issues  
5 about proceeding in federal court during the pendency of state  
6 exhaustion proceedings.

7 Both Mr. Schardl and Ms. Fay responded that state exhaustion  
8 proceedings remain pending with no dates or hearings scheduled in the  
9 California Supreme Court. The last activity in the case was in  
10 February of 2003.

11 With respect to appointment of counsel, Mr. Schardl informed the  
12 Court that the Federal Defender's Office is trying to determine  
13 whether it will be able to represent Ray in light of a sudden influx  
14 of new capital federal cases. Since Ray is housed in a prison under  
15 the jurisdiction of the state of Michigan, and that is where Mr.  
16 Schardl states he will continue to be housed, the Selection Board is  
17 considering the recommendation of out-of-state counsel for the  
18 appointment. The determination of whether the Federal Defender's  
19 Office will represent Ray likely will be made by March 1, 2006, the  
20 same date the Office will determine its availability for an  
21 appointment in another capital case pending in the Fresno Division of  
22 the Eastern District. Other than a determination as to when the  
23 Federal Defender's Office will decide its availability for appointment  
24 in this matter, Mr. Schardl informed the Court that the Selection  
25 Board cannot provide an estimate as to when a recommendation for  
26 appointment of counsel may be made.

27 Ms. Fay informed the Court that the Warden has no objection to  
28 the appointment of federal counsel during the pendency of state

1 exhaustion proceedings. All defenses and objections on the grounds  
2 of the statute of limitations and/or procedural default, however, are  
3 reserved by the Warden, and will be advanced at the time Ray files his  
4 federal petition, as deemed necessary.

5 Pending the recommendation of counsel to represent Ray in these  
6 federal proceedings, Mr. Schardl indicated the willingness of the  
7 Federal Defender's Office to file quarterly status reports of the  
8 progress of the state exhaustion proceedings, as the Court previously  
9 ordered. The Court additionally directs the Selection Board to  
10 provide an informal status report on its progress in locating  
11 qualified counsel. The informal status report may be in the form of  
12 a letter addressed to the Court and transmitted within five calendar  
13 days from the filing of this order. If a recommendation of counsel  
14 cannot be made within 90 days from Ray's original request for  
15 appointment of counsel (December 28, 2005), the Court will require a  
16 follow-up status report letter explaining the circumstances of the  
17 delay no later than March 31, 2006.

18  
19 IT IS SO ORDERED.

20  
21 DATED: February 22, 2006

/s/ Anthony W. Ishii  
Anthony W. Ishii  
United States District Judge